

Rescinded -
Replaced w/
2003-6

SUPERIOR COURT
OF THE
STATE OF DELAWARE

HENRY duPONT RIDGELY
PRESIDENT JUDGE

COURT HOUSE
DOVER, DE 19901

ADMINISTRATIVE DIRECTIVE
OF THE
PRESIDENT JUDGE OF THE SUPERIOR COURT
OF THE STATE OF DELAWARE

NO. 97-2

PROCEDURES FOR HANDLING APPLICATIONS
TO PROCEED *IN FORMA PAUPERIS*

This 9th day of Sept., 1997, IT IS DIRECTED:

1. All applications and affidavits to proceed *in forma pauperis* shall be presented to the judge assigned to the case. In the event of the unavailability of that judge, the Prothonotary shall present the affidavit and motion to the civil office judge or the next available judge in that order.

2. In the case of a non-inmate applicant, the judge to whom presented may:

(a) Enter an order waiving all fees and court costs and directing the complaint be filed.

(b) Enter an order directing certain fees and court costs be paid and directing the complaint be filed.

(c) Enter an order establishing a schedule for payment of fees and court costs and directing the complaint be filed.

(d) Enter an order denying the application and directing payment of fees by a specified date.

A form of such an order is Attachment A.

3. In the case of an applicant who is an inmate, the Court shall:

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(a) Direct the amount of fees and costs to be paid and that the inmate shall pay twenty percent of the average daily balance of that inmate's account for the previous six months or the time of incarceration, whichever period of time is less.

(b) Determine whether, based upon the affidavit, the inmate should be ordered to pay more than twenty percent.

(c) Establish a schedule for payment.

The Prothonotary shall forward a copy of the payment order to the institution where the inmate is housed.

(d) Order that the complaint be filed, if any of the above is ordered.

(e) Enter an order denying the application and directing payment of fees by a specified date.

A form of such an order is Attachment B.

4. After establishing the amount of fees and costs to be paid, the assigned judge shall review the complaint before service of process.

5. The assigned judge shall dismiss the complaint and direct no service of process shall issue if the judge finds:

(a) the complaint is factually frivolous; or

(b) malicious, or

(c) legally frivolous and that even a *pro se* plaintiff, acting with due diligence, should have found well-settled law disposing of the issue(s) raised.

6. If the assigned judge does not dismiss the complaint upon initial review as provided in paragraph 5, the judge shall order that service of process issue. A form of such an order is Attachment C.

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7. The assigned judge may subsequently dismiss the complaint for any of the three grounds specified in paragraph 5. Any such order shall specify whether the complaint was factually frivolous, malicious or legally frivolous.

8. The Court retains jurisdiction over the *in forma pauperis* litigant after dismissal or judgment is entered against such litigant for purposes of collecting all fees and costs.

9. If the litigant is an inmate and the Court has dismissed the action for any of the reasons stated in paragraphs 5 or 7, the Court may order the Department of Correction to forfeit the portion of the inmate's good time credits accumulated from the date the action was filed up to and including every month until the Court disposed of the action.

10. If the Court finds that the action was factually or legally frivolous or was malicious, the Court may enter an order enjoining the litigant from filing future claims without leave of the Court. If so enjoined, the litigant must submit with any future action an affidavit certifying that:

(a) the claims to be litigated have never been raised or disposed of by any court; and

(b) the facts alleged are true and correct; and

(c) the affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issue(s) raised; and

(d) the affiant has no reason to believe the claims are foreclosed by controlling law; and

(e) the affiant understands that the affidavit is made under penalty of perjury.

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11. If the application to proceed *in forma pauperis* is denied, the Prothonotary shall notify the applicant that:

- (a) The application has been denied.
- (b) The amount of the filing fee due.
- (c) The filing fee must be paid by a specified date (not less than 15 calendar days away) from the date of the notice and, if not paid by then, the action will be dismissed.



President Judge

oc: Prothonotaries
xc: Superior Court Judges
Superior Court Commissioners
Court Administrator
Case Scheduling Offices
Law Libraries
George Buncich, DCC
Diane Ranger, SCI
Rod Johnson, MPCJF
Angelo Cauthen, MPCJF
Rob Wolfe, BWCI
Francene Kobus, DCC
File

**ORDER ON APPLICATION TO PROCEED
IN FORMA PAUPERIS
(Non-inmates)**

The Court having considered the application to proceed *in forma pauperis* and the affidavit filed in connection therewith,

IT IS ORDERED:

_____ The application is **GRANTED**. The applicant shall:

_____ Pay no fees or court costs; or

_____ Pay certain fees and court costs; namely: _____

_____ Pay such fees and court costs:

_____ By _____

\$_____ per month

The complaint shall be filed.

_____ The application is **DENIED**. The filing fee of \$_____ is due (not less than 15 calendar days from the date of notice). If not paid by then, the complaint will be dismissed.

J.

DATED: _____

ATTACHMENT A

**ORDER ON APPLICATION TO PROCEED
IN FORMA PAUPERIS
(Inmate)**

The Court having considered the application to proceed *in forma pauperis* and the affidavit filed in connection therewith,

IT IS ORDERED:

_____ The application is **GRANTED**. The applicant shall:

_____ Pay twenty percent (20%) of the applicant's average daily balance in the applicant's inmate account for the previous six months or time of incarceration, whichever period of time is less.

_____ Pay _____
(Dollars or more than 20% of account).

_____ No fee or court costs to be paid.

The complaint shall be filed.

_____ The application is **DENIED**. The filing fee of \$_____ is due (not less than 15 calendar days from the date of notice). If not paid by then, the complaint will be dismissed.

DATED: _____

J.

ATTACHMENT B

ORDER UPON INITIAL REVIEW OF COMPLAINT

The Court having reviewed the complaint:

1. _____ **IT IS ORDERED** that the complaint is **DISMISSED** because:

_____ The complaint was factually frivolous.

_____ The complaint was legally frivolous.

_____ The complaint was malicious.

Service of process shall not issue.

2. _____ The complaint is **NOT DISMISSED** and service of process shall
issue.

IT IS SO ORDERED.

J.

DATED: _____

ATTACHMENT C